

DECISION ON CHAPTER 40B COMPREHENSIVE PERMIT APPLICATION

G.L. c. 40B, §§20-23

VILLAGE AT SHIRLEY STATION

APPLICANT

Middlesex Land Holdings, LLC

LOCATION OF PROPERTY INVOLVED

**42 BENJAMIN ROAD
SHIRLEY, MA**

Received

NOV 22 2021

Shirley Town Clerk

I. PROCEDURAL HISTORY

1. An application for a Comprehensive Permit was submitted by Middlesex Land Holdings, LLC ("Applicant") to the Shirley Zoning Board of Appeals ("Board") on February 18, 2020. As originally proposed by the Applicant to MassHousing, the project consisted of the construction of 52 townhouse condominiums on 10 acres of land at 42 Benjamin Road in Shirley, Massachusetts (the "Property").
2. During the hearing process, the Applicant revised the Project to 48 units (the "Project"), 12 of which will be affordable and will count on the Subsidized Housing Inventory ("SHI").
3. The Board's hearing on the application was duly opened on March 16, 2020 and was continued to March 19, 2020 to April 6, 2020, to May 11, 2020 to June 1, 2020 to December 16, 2020 to January 4, 2021, to February 1, 2021, to March 1, 2021 to April 5, 2021, to May 17, 2021 to May 24, 2021 to June 14, 2021, to July 19, 2021 to August 16, 2021, to September 20, 2021 to October 5, 2021. The hearing was closed on October 5, 2021. The Board deliberated on the application on November 8, 2021 and voted to approve the Project with conditions. All submittals concerning the Project are part of the administrative record kept at Shirley Town Hall and incorporated herein. All waivers requested and votes taken are listed on **Exhibit A** and incorporated herein.
4. The Property is located in the R-2 Zoning District. Originally, there was a single-family dwelling on the Property. The Applicant filed an Approval Not Required plan pursuant to G.L. c. 41, § 81P to separate and maintain the existing single-family dwelling as a separate lot.
5. The Applicant provided certain materials, reports, and revised plans during the course of the public hearing on the Application.
6. The Board utilized the services of TEC and Joseph Peznola of Hancock Engineering who

advised the Board as its technical consultant through the Massachusetts Housing Partnership Technical Review program.

7. During the hearings, there was significant public input from abutters. The Board heard input from abutters and other interested persons throughout the hearing process on topics including, but not limited to, the density of the Project, the layout of the Project with respect to dumpster locations, and increased traffic and safety concerns on Benjamin Road.
8. The following Board members were present for the entire public hearing process: Chairman Leonardo Guercio, Vice Chairman Kevin Kelly, Brian Hildebrant, Lee Mirkovic, James Yokum, and David Swain (alternate – did not vote). Any member absent from only one public hearing complied with G.L. c. 39, § 23D.
9. The Board voted (Guercio, Kelly and Hildebrant in the affirmative and Mirkovic and Yokum in the negative) on November 8, 2021 to approve the Project with conditions.

II. JURISDICTIONAL FINDINGS

1. The Applicant received Project Eligibility Letters (“PELs”) from MassHousing dated July 25, 2019 and submitted copies to the Board with the original application. According to the PELs, the Applicant has demonstrated its eligibility to submit an application for a Comprehensive Permit to the Board, and the development fulfills the minimum project eligibility requirements set forth in 760 CMR 56.04(1) as follows:
 - b. The Applicant has formed a limited dividend organization (as defined in 760 CMR 56.02), Middlesex Land Holdings, LLC, which has a principal place of business of 352 Middlesex Road, Unit #3, Tyngsboro, Massachusetts 01879. The Applicant has agreed to conform to the limited divided requirements of M.G.L Chapter 40B.
 - c. The Applicant has agreed to execute a Regulatory Agreement that limits its total profit and directs the redistribution of excess profit in accordance with the regulations adopted by the Massachusetts Department of Housing and Community Development (“DHCD”).
2. The Board engaged peer reviewers to review issues concerning civil engineering, traffic, site design, and stormwater impacts of the Project. The Board also sought comments from Town Departments and abutters in the surrounding area.
3. The Board is aware that the goal of G.L. c. 40B is to promote the development of affordable housing while considering the Local Concerns. Pursuant to 760 CMR 56.02, Local Concerns involve 1) the need to protect the health or safety of the occupants of a proposed Project or of the residents of the municipality; 2) to protect the natural

environment; 3) to promote better site and building design in relation to the surroundings and municipal and regional planning; 4) or to preserve Open Spaces. With the Project as conditioned, and the substantial waivers granted, the Board is of the opinion that this decision will promote affordable housing while taking into consideration Local Concerns.

4. The Board was presented with many concerns regarding the traffic on Benjamin Road and the safety of those walking to the Shirley Station train station.
5. In consideration of the need for affordable housing in Shirley and the Local Concerns discussed above, the Board finds that granting this Comprehensive Permit with the conditions and waivers contained below, provides a significant number of affordable housing units consistent with Local Needs.
6. The Applicant was afforded ample opportunity to address the conditions discussed during the public hearing and did not challenge the conditions on the grounds that they either singly or in the aggregate rendered the Project uneconomic. Therefore, the Board finds that such conditions will not render the project uneconomic.
7. The Board acknowledges concerns raised by abutters and other interested parties, including concerns relating to construction impacts, Project design, project density, public safety, and increased traffic. The Board has addressed these concerns by the imposition of appropriate conditions.
8. The Board's grant of this Comprehensive Permit shall not be construed to either confirm or deny any property rights with regard to the Project or neighboring properties.

III. CONDITIONS OF APPROVAL

Based upon the findings of the Board and testimony and information received into the record during the public hearing process, the Board grants to the Applicant a Comprehensive Permit to construct 48 unit dwellings buildings (12 to be affordable) on the Property in accordance with G.L. c. 40B and its implementing regulations 760 CMR. § 56.00, subject to the conditions and limitations set forth herein.

The Comprehensive Permit described herein incorporates the requested relief from local zoning, subdivision control, Conservation Commission and Board of Health bylaws and regulations identified herein. In granting this relief, the Board recognizes that the legal requirements for issuing a comprehensive permit have been met and finds that the Comprehensive Permit is consistent with local needs as defined in G.L. c. 40B, §20.

A. *ADMINISTRATIVE*

1. This Comprehensive Permit is granted to the Applicant and its limited dividend successors and assigns for the purpose of constructing a multi-family housing development on land on Benjamin Road Parcel ID: 33 B 4 as well as a parcel on Center Road, Parcel ID 33 B 5, in Shirley, Massachusetts conditioned herein and may not be transferred or assigned to any party without the

approval of the Subsidizing Agency and notice to the Board, as required by 760 CMR 56.05(12)(b) or any successor regulation. Said construction is to be carried out consistent with the Final Plans as defined herein, including all notes on the Final Plans, and subject to the conditions set forth in this Decision. The Final Plans shall consist of the following plans, which shall be modified as necessary to comply with this Decision, and submitted to the Board as provided herein:

Site Plans

- **Site Development Plan**, Job # 2124 Village at Shirley Station, in Shirley, MA, dated January 10, 2020, revised August 26, 2021, prepared by Land Engineering & Environmental Services, Inc. (Sheet 1 of 12)
- **Existing Conditions Plan**, Job # 2124 Village at Shirley Station, in Shirley, MA, dated January 10, 2020, revised August 26, 2021, prepared by Land Engineering & Environmental Services, Inc. (Sheet 2 of 12)
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- **Layout Plan**, Job # 2124 Village at Shirley Station, in Shirley, MA, dated January 10, 2020, revised August 26, 2021, prepared by Land Engineering & Environmental Services, Inc. (Sheet 3 of 12)
- **Grading Plan**, Job # 2124 Village at Shirley Station, in Shirley, MA, dated January 10, 2020, revised August 26, 2021, prepared by Land Engineering & Environmental Services, Inc. (Sheet 4 of 12)
- **Utility Plan**, Job # 2124 Village at Shirley Station, in Shirley, MA, dated January 10, 2020, revised August 26, 2021, prepared by Land Engineering & Environmental Services, Inc. (Sheet 5 of 12)
- **Plan and Profile Plan**, Job # 2124 Village at Shirley Station, in Shirley, MA, dated January 10, 2020, revised August 26, 2021, prepared by Land Engineering & Environmental Services, Inc. (Sheet 6 of 12)
- **Details Plan**, Job # 2124 Village at Shirley Station, in Shirley, MA, dated January 10, 2020, revised August 26, 2021, prepared by Land Engineering & Environmental Services, Inc. (Sheet 7 of 12)
- **Details Plan**, Job # 2124 Village at Shirley Station, in Shirley, MA, dated January 10, 2020, revised August 26, 2021, prepared by Land Engineering & Environmental Services, Inc. (Sheet 8 of 12)
- **Details Plan**, Job # 2124 Village at Shirley Station, in Shirley, MA, dated January 10, 2020, revised August 26, 2021, prepared by Land Engineering & Environmental Services, Inc. (Sheet 9 of 12)
- **Details Plan**, Job # 2124 Village at Shirley Station, in Shirley, MA, dated April 10, 2020, revised August 26, 2021, prepared by Land Engineering & Environmental Services, Inc. (Sheet 10 of 12)
- **Cross-Country Waterline Plan**, Job # 2124 Village at Shirley Station, in Shirley, MA, dated May 21, 2021, revised August 26, 2021, prepared by Land Engineering & Environmental Services, Inc. (Sheet 11 of 12)
- **Erosion Control Plan** Job # 2124 Village at Shirley Station, in Shirley, MA, dated August 4, 2021, revised August 26, 2021, prepared by Land Engineering & Environmental Services, Inc. (Sheet 12 of 12)

Building Plans

48 Unit Townhouse Project, Village as Shirley Station, Shirley, MA

- Front Elevation, Job No. 21-000 2B, Sheet A-1, dated September 17, 2021
- Right Side Elevation, Job No. 21-000 2B, Sheet A-2, dated September 17, 2021
- Rear Elevation, Job No. 21-000 2B, Sheet A-3, dated September 17, 2021
- Left Side Elevation, Job No. 21-000 2B, Sheet A-4, dated September 17, 2021
- Foundation Plan, Job No. 21000 2B, Sheet A-5, dated September 17, 2021
- First Floor Plan, Job No. 21-000 2B, Sheet A-6, dated September 17, 2021
- First Floor Plan, Optional, Job No. 21-000 2B, Sheet A-6A, dated September 17, 2021
- Second Floor Plan, Job No. 21-000 2B, Sheet A-7, dated September 17, 2021
- Front Elevation, Job No. 21-000, Sheet A-1, dated September 17, 2021
- Right Side Elevation, Job No. 21-000, Sheet A-2, dated September 17, 2021
- Rear Elevation, Job No. 21-000, Sheet A-3, dated September 17, 2021
- Left Side Elevation, Job No. 21-000, Sheet A-4, dated September 17, 2021
- Foundation Plan, Job No. 21-000, Sheet A-5, dated September 17, 2021
- First Floor Plan, Job No. 21-000, Sheet A-6, dated September 17, 2021
- First Floor Plan, Optional, Job No. 21-000, Sheet A-6A, dated September 17, 2021
- Second Floor Plan, Job No. 21-000, Sheet A-7, dated September 17, 2021
- Bedroom #3 Floor Plan, Job No. 21-000, Sheet 8, dated September 17, 2021

Landscape Plans

- **Landscape Plan**, Job # 2124 Village at Shirley Station, in Shirley, MA, dated January 23, 2020, revised August 26, 2021, prepared by Land Engineering & Environmental Services, Inc. (Sheet 1 of 1)

Additionally, the following documents were utilized in the Decision:

COMPREHENSIVE PERMIT APPLICATION February 2020

48 Units of home ownership

Submitted by Middlesex Land Holdings, LLC Dennis M. Page, Manager Attorney Melissa E. Robbins

515 Groton Road, Suite 204

Westford, MA 01886

1.0 Overview

2.0 MassHousing: NEG Program

3. The Site

4.0 The Project

5.0 Requested Exceptions

6.0 Owner / Applicant

7.0 Project Financing

8.0 Summary

Exhibits:

- A. MassHousing Corporate Information
- B. Program Overview
- C. Project Eligibility application
- D. Project Eligibility Letter
- E. Affordable Housing Restriction
- F. ProForma
- G. Regulatory Agreement
- H. Soil Reports
- I. Site Plans
- J. NHESP Informational Determination
- K. Architectural Drawings
- L. Drainage Narrative
- M. Requested Exceptions
- N. Site Control - P&S
- O. Legal Existence
- P. Abutters List
- Q. Filing Fee's
- R. Transportation Assessment

LIST OF REQUESTED EXCEPTIONS/WAIVERS

Dated Sept 14, 2021

Water Supply Flow Analysis, dated April 7, 2021 by Wright - Pierce, 94 North Elm St., Suite 205, Westfield, MA 01085

Weston & Sampson - Sewer Review Comments, dated May 13, 2021 John C. Potts, P.E., Senior Project Manager 55 Walkers Brook Drive, Suite 100 Reading, MA

Documents submitted by Doug Lees:

Letter dated August 26, 2021 Dumpster Location

Letter dated August 12, 2021 re: Alternate Dumpster Location Analysis

Letter Dated 6-14-2021 re: Vector Borne Diseases

Peer Review Letter dated July 1, 2020

The Engineering Corp TEC

146 Dascomb Road, Andover, MA 01810

Prepared by Peter F. Ellison, PE - Director of Strategic Land Planning And Elizabeth Oltman, PE
- Director of Transportation Planning

Response to TEC letter date July 1, 2020

Dated: April 16, 2021 from: TEPP LLC - Transportation Engineering, Planning & Policy

93 Stiles Rd., Suite 201 Salem, MA 03079

800 Turnpike Road, Suite 300, No. Andover, MA 01845 Kim Eric Hazavartian, Ph.D., P.E.,
PTOE

TEC Responses to above dated May 3, 2021

TEC final response dated: July 5, 2021

2. This comprehensive permit is issued pursuant to the Applicant's MassHousing project eligibility letter dated as of October 29, 2019, which approved up to fifty-two (52) residential dwelling units including thirteen (13) affordable units. This number was revised as of February 11, 2020 in a narrative submitted with the Comprehensive Permit Application. The updated number of townhouse style residential units is to be no more than forth-eight (48), including twelve (12) sold as affordable units. These units will be two (2) and three (3) bedrooms for a total of one hundred and two (102) bedrooms total. In accordance with MassHousing's final approval process, the Applicant shall submit to MassHousing for review and final acknowledgement of consistency with this Decision, the Final Plans.

3. The Project shall be limited to 102 bedrooms, and no more than 6 (six) of the residential units shall contain more than three bedrooms as defined by Title 5 of the state Environmental Code and the state Building Code. Each bedroom shall be presumed to generate 110 gallons of wastewater per day, per Title 5. (11,220 total flow for the entire Development) Of these dwelling units, not less than twenty-five percent (25%), shall be reserved for sale by qualifying households earning at or below 80% of the area median income, as defined and amended from time to time by the subsidizing agency for this project. Per the subsidizing agency's rules and guidelines, the affordable units shall be evenly dispersed throughout the Project and shall be indistinguishable from the market rate units in the Project. The affordable units shall remain affordable in perpetuity by deed riders in form and substance acceptable to the subsidizing agency and the Board for the project.

4. Prior to any ground disturbance, clearing of vegetation, or construction at the site ("Site Activities"), the Applicant shall obtain the Board's approval of the Applicant's Final Plans, which shall reflect: (a) the additional plan details and revisions called for under the Conditions set forth herein; (b) any additional changes required by other local boards and agencies to comply with state and federal law, including any Order of Conditions, or Superseding Order of Conditions, under the State Wetlands Protection Act, Title 5 of the State Environmental Code, and any local regulations not waived by this Comprehensive Permit; and (c) any requirements of MassHousing upon final approval of the Project. Upon completion of Applicant's Final Plans, the Applicant shall submit its Final Plans to the Board for review to determine consistency with this Comprehensive Permit. The Final Plans shall be reviewed as provided in the conditions herein. The Applicant's Final Plans shall incorporate and include the following design changes and additions:

- Any modifications or details required by this Decision.

5. The Applicant shall comply with the stormwater management plans evidenced by the following:

- The specifications shown on the Final Plans
- The Stormwater Management & Erosion Control Plan, Village at Shirley Station #42 Benjamin Road, Shirley, MA Prepared for Middlesex Land Holdings, LLC. LEES Job No. 2124 Prepared on January 10, 2020, revised on June 1, 2021.

6. The Applicant shall obtain an Order of Conditions (or Superseding Order of Conditions) under the State Wetlands Protection Act for the Final Plans, as conditioned herein prior to

engaging in any Site Activities. The Applicant shall follow guidelines issued by the Conservation Commission.

7. The Board shall have the power, at a public meeting and without further public hearing to modify or amend the terms and conditions of this Comprehensive Permit on the application of the Applicant, or upon its own motion, to correct technical errors in this Comprehensive Permit, or to address the Applicant's noncompliance with any terms or conditions of this Comprehensive Permit.

8. In the event the Applicant seeks any change in the Comprehensive Permit after this decision is final, any such change must be presented to the Board for approval and for modification of this decision. Within 20 days the Board shall determine and notify the Applicant whether it deems the change substantial or insubstantial, with reference to the factors set forth at 760 CMR 56.07(4).) If the change is determined to be insubstantial or if the Board fails to notify the Applicant by the end of such 20-day period, the Comprehensive Permit shall be deemed modified to incorporate the change. If, during a public meeting, the Board deems a change to be substantial, then the Board shall hold a subsequent public hearing within 30 days of its determination and issue a decision within 40 days of termination of the hearing, at which the Board may approve or disapprove the requested modifications or amendments to this decision, in accordance with the provisions of Mass. Gen. Laws c. 40B, section 21, the provisions of 760 CMR 56.05 (11). The Board will determine whether additional information and advice is necessary from other boards and officials in the event of such substantial change, and will then determine whether the change or requested relief is to be approved and the decision amended accordingly. "Substantial Change" for the purposes of this paragraph shall include, but not be limited to, all matters defined as substantial changes in 760 CMR 56.07(4). If it deems necessary, the Board may at the Applicant's expense retain consultants to review and advise the Board regarding any proposed changes.

9. All easements and covenants affecting the use of the Site have been identified, and such covenants and easements are identified on the Plan of Record. The Applicant shall submit any written or recorded instruments granting or agreeing to such easements and covenants.

10. Unless substantial construction of the Project has commenced as further defined by the issuance of a building permit, the Comprehensive Permit shall expire three years after the appeal period. Any requests for an extension of time shall be made in writing no less than thirty days prior to the expiration of the Comprehensive Permit.

11. Following the passage of the appeal period, the Applicant shall record this Decision at the Middlesex County Registry of Deeds with the plans itemized herein, and provide proof of said recording to the Board of Appeals staff. **No building permits will be issued until this condition is satisfied.**

12. Any transfer of the Project shall be in accordance with 760 CMR 56.05(12)(b). Prior to substantial completion of a Project or a phase thereof, a Comprehensive Permit may be transferred to a person or entity other than the Applicant, upon written confirmation from the Subsidizing Agency that the transferee meets the requirements of 760 CMR 56.04(1)(a) and (b),

and upon written notice to the Board. Transfer of a permit shall not, by itself, constitute a substantial change pursuant to 760 CMR 56.07(4). After substantial completion, a Comprehensive Permit shall be deemed to run with the land and a transfer must be approved by the Board of Appeals after public hearing.

13. Construction Plans. Not less than ninety days prior to the application for a building permit, and to the degree that the following plans are not part of the plan set described herein, the Applicant shall submit final construction plans to the Board and Building Department, for purposes of confirming that the construction plans are consistent with the requirements of this Decision. The approval of the Building Department shall not be unreasonably withheld. All construction plans shall be stamped by a registered architect or registered professional engineer, as may be applicable. The Board may engage, at the Applicant's expense and upon prior agreement to scope and cost of services, one or more agents to review the plan(s) and make recommendations for approval or disapproval to the degree that a plan or plans are inconsistent with this decision.

14. As-built Plans. Within sixty days of issuance of the final certificate of occupancy, the Applicant shall provide "as-built" plans of the roads, buildings, water, and electrical distribution systems to the Board of Appeals, Fire Department, Building Department and Highway Department; such plans shall be approved by the Board or its agent for consistency with this decision. Approval shall not be unreasonably withheld and shall be deemed granted if not reviewed by the Board or its Agent within thirty days of submission by the Applicant. The Applicant shall provide these plans in digital format acceptable to the Town including but not limited to a format compatible with the Town's Geographic Information System (GIS).

The digital copy of the final set of approved as-built plans must follow the five requirements listed below unless waived by the Building Department:

- a) All plans and specifications must be submitted on electronic media (CD or DVD_ROM) using an IBM-PC or compatible file format). Acceptable file formats include: AutoCAD *.dwg, AutoCAD *.dxf, Arc View *.shp, or ArcGIS Geodatabase *.mdb. The files must be identical to the printed plan and contain all information included on the written plan. Upon project completion a digital submission of the "as-built" plan is required prior to receiving a Certificate of Completion from the Building Department.
- b) All digital mapping data must be delivered in the Massachusetts State Plane Coordinate system with a horizontal datum of NAD83 and vertical datum of NGVD88.
- c) Each feature type must be organized in the CAD or GIS data structure as a separate layer using logical layer names. For example, there must be separate CAD layers for buildings, roads, parcel lines, and wetlands. Having all these features in a single CAD layer or GIS file will not be accepted.
- d) Documentation of the data format must be provided with a description of the CAD layers and list of the types of features placed in each layer. Submission of multiple files must also include a list of the files and their purpose.
- e) The data submitted must include documentation on the method used to gather the data, the name of the person(s) responsible for preparing the data, contact information, an estimation

of the horizontal and vertical accuracy, and the date of data capture. All media shall be free from any and all defects and viruses, and labeled as to their contents.

15. The Applicant shall promptly pay the reasonable fees of the Board's consultants for post-permit reviews of the plans or documents described herein and for inspections during the construction phase, as may be deemed necessary or appropriate.

16. Copies of all required legal documents including, but not limited to, Regulatory Agreement and Condominium Documents prior to first Certificate of Occupancy shall be submitted to the Board and, if necessary, the Shirley Town Counsel for review and comment, **prior to issuance of any certificate of occupancy**. It shall be the responsibility of the Applicant to pay all legal costs associated with the review of this decision, if applicable, as well as documents associated with any condition of approval by Town Counsel.

17. The Applicant shall provide the Board with copies of any and all documents and statements provided by the Applicant to the Subsidizing Agency or its designated auditor of the Applicant's costs and revenues for informational purposes.

18. As a "limited dividend organization," the Applicant's profit shall not exceed what is statutorily allowed for the Project. Any profit in excess of what is statutorily allowed shall be paid in accordance with 760 CMR 56.04(8) I. Review of the Applicant's limited dividend obligations shall be done in accordance with the Regulatory Agreement. The Applicant shall comply with the requirements of the Project's subsidizing agency and applicable laws, regulations and guidelines.

19. The Board or its agent(s) may enter onto and view and inspect the subject Property during regular business hours, with prior written notice, with consent not to be unreasonably denied or delayed and until as-built plans are approved, to ensure compliance with the terms of this Decision, subject to applicable safety requirements. After completion of construction, the Town's inspection officials shall have authority subject to prior written notice, with consent not to be unreasonably denied or delayed to enter the common areas of the property for purposes of ensuring compliance with the conditions of this Decision and any other applicable permits, regulations, bylaws and statutes.

B. HOUSING

1. The Project shall not be age restricted and shall be subject to a general lease provision, subject to the review and approval of the Town Attorney / Building Inspector, limiting the ability to convert any room not designated as a bedroom on the Final Plans as a bedroom. The total number of bedrooms by unit shall be as follows:

48 UNITS TOTAL, 12 AFFORDABLE

MARKET RATE:

Units	Bedroom Count
32	2
4	3

AFFORDABLE:

Units	Bedroom Count
10	2

2 As a condition of any approval hereunder, at least 25% of the dwelling units shall be and shall remain affordable and shall be marketed to eligible households subject to approval by the subsidizing agency. The Affordable Units shall be and shall remain eligible to be included in the Town's Subsidized Housing Inventory, as maintained by DHCD.

3 The Applicant shall notify the Board and the Building Inspector when building permits are issued for Affordable Units and cooperate with the preparation of request forms to add the Affordable Units to the Town's SHI. The Applicant shall notify the Board and the Town Planner when occupancy permits are issued for the Affordable Units and cooperate with the preparation of request forms to add the units to the Town's SHI permanently. The Affordable Units shall permanently remain affordable units, for so long as the Project is not in compliance with the Town's Zoning By-law, or for the longest period allowed by law, if longer, so that the Affordable Units shall continue to serve the public purposes for which this Comprehensive Permit was authorized under G.L. c. 40B, §§ 20-23.

4 To the extent allowed under G.L. c. 40B and the regulations promulgated thereunder and other applicable law, the Applicant shall provide a preference category for Shirley residents, and their parents and children, and for employees of the Town of Shirley in the initial sales of the Affordable Units. This preference shall be implemented by the Applicant and the Applicant shall maintain records of its marketing efforts, which records shall be open to review by the Town for compliance with the local preference set forth herein, to the extent such local preference has been allowed by the Subsidizing Agency. The foregoing local preference shall be implemented pursuant to procedures approved by the Subsidizing Agency. The costs associated with the marketing of units in the Project, including the advertising and processing for the Affordable Units shall be borne by the Applicant.

5 The Board acknowledges that the Town will be required to provide evidence satisfactory to the Subsidizing Agency of the need for the foregoing local preference and to obtain approval of the categories of persons qualifying for the same, and in no event shall the Applicant be in violation of the terms of this Comprehensive Permit to the extent the Subsidizing Agency disapproves the local preference requirement or any aspect thereof. The Applicant shall provide reasonable and timely assistance to the Town in providing this evidence.

6 The Applicant shall execute a Regulatory Agreement that shall be countersigned by the Subsidizing Agency as required under G.L. c.40B and submit annual reports to the Subsidizing Agency in accordance with the Regulatory Agreement. The Affordable Units shall be identified before building permits are sought and the Affordable Units shall not be segregated from the market rate units.

7 A Regulatory Agreement with MassHousing (or its successor or assign or its designee) is hereby required which will include detailed restrictions in accordance with 760 CMR 56. The Applicant shall provide to the Board a copy of the final executed documents with MassHousing.

The Agreement shall contain, at a minimum, the following terms or substantially similar provisions as may be required by the subsidizing agency:

- An acknowledgment that the Affordable Units shall remain in perpetuity to the extent allowed by applicable laws. It is assumed MassHousing shall comply with the requirements of 760 CMR 56.05(13).
- The Affordable Units shall not be segregated from the market rate units. The Affordable Units shall not be substantially different in exterior appearance from the standard market rate units in accordance with MassHousing guidelines.
- Any excess profit, as defined in the Regulatory Agreement, shall be paid to the Town of Shirley pursuant to the Regulatory Agreement.

8 The Applicant shall cooperate with the preparation of request forms to add the Affordable Units to the Town's SHI. The Affordable Units shall permanently remain affordable units, for so long as the Project is not in compliance with the Town's Zoning By-law, or for the longest period allowed by law, if longer, so that the Affordable Units shall continue to serve the public purposes for which this Comprehensive Permit was authorized under G.L. c. 40B, §§ 20-23.

9 The Applicant shall enter into a Permanent Restriction/Regulatory Agreement with the Town, in a form and substance reasonably acceptable to the Board and its counsel (the "Town Regulatory Agreement"), which shall be recorded with the Middlesex Registry of Deeds prior to issuance of any building permit and signed by all necessary parties, including all mortgagees and lien holders of record.

10 The Town Regulatory Agreement: (i) shall only become effective if and when the Regulatory Agreement with the Subsidizing Agency is terminated, expires or is otherwise no longer in effect and is not replaced with another regulatory agreement with another Subsidizing Agency; (ii) shall require that the Project shall remain 25% affordable so long as the Project does not conform to local zoning; (iii) shall require that at least 25% of the units in the Project shall be affordable and rented by low and moderate income households as that term is defined in M.G.L. Chapter 40B, Sections 20-23; and (iv) shall restrict or limit the dividend or profit of the Applicant only if and as required under G.L. c.40B and 760 CMR 56.00, et seq., and no independent limitation on dividends or profits is imposed hereunder.

11 The Town Regulatory Agreement shall constitute a restrictive covenant and shall be recorded against the Property and shall be enforceable by the Town and shall require that the Affordable units shall remain affordable in perpetuity, meaning, specifically, for so long as the Project does not conform to the Town Zoning Bylaws or for the longest period allowed by law, whichever period is longer.

12 While the Regulatory Agreement with the Subsidizing Agency (or one with another Subsidizing Agency) is in effect, the Subsidizing Agency shall be responsible to monitor compliance with affordability requirements pursuant thereto; however, the Town may request and shall be provided by the Applicant with all information that is provided to the Subsidizing Agency and may take any steps allowed under G.L. c.40B and 760 CMR 56.00 in relation to excess profits and enforcement of affordability provisions.

13 If and when the Town Regulatory Agreement takes effect, the affordability requirements shall be enforceable by the Town or its designee, to the full extent allowed by M.G.L. Chapter 40B, Sections 20-23. However, this clause shall not be used or construed or otherwise exercised in conflict with the holdings in "Board of Appeals of Amesbury v. Housing Appeals Committee, 457 Mass. 748 (2010) or any other relevant decisional law or amendment to G.L. Chapter 40B, §§20-23, nor shall the foregoing be deemed to limit the Town's authority to enforce the provisions of this Comprehensive Permit in accordance with the legal exercise of its zoning enforcement powers. At such time as the Town becomes responsible for monitoring the affordability requirements for the Project, the Applicant shall provide the Town with a reasonable monitoring fee.

14 If at any time it appears that the Applicant is in violation of an affordable housing restriction, then the Board may pursue such enforcement rights as it may have under the affordable housing restriction and/or applicable law.

15 The Town, by and through the Board or its designee, shall have continuing jurisdiction over the Project to ensure compliance with the terms and conditions of this Decision.

16 The Applicant shall comply with all final approval requirements, as per the Project's subsidizing agency. Prior to receiving any building permit, the Applicant shall obtain Final Approval from the Subsidizing Agency pursuant to 760 CMR 56.04(7) and shall provide evidence of such Final Approval to the Building Official and the Board.

17 Prior to the first certificate of occupancy for the first dwelling unit, the Applicant shall submit to the Board and Town Counsel the Condominium Master Deed, Condominium Declaration of Trust and accompanying condominium plans (together, the "Condominium Documents"). Town Counsel shall have 60 days to approve the Condominium Documents.

C. CONSTRUCTION

1. No Site Activities shall begin prior to a preconstruction conference. The Applicant shall convene a preconstruction conference with Town departments including, but not limited to, the Building Department, Fire Department, Board of Public Works, Conservation Department and Board of Health at least 14 days prior to the planned commencement of construction. For the purposes of this decision, "commencement of construction" shall occur prior to the demolition of the existing on-site structures. The Applicant shall convene such conference by contacting the Building Department in writing. All relevant contractors and subcontractors involved with site preparation/site construction activities shall attend this meeting. This approval with conditions shall be reviewed by all parties involved. At the conference, a schedule of inspections shall be agreed upon by the Applicant, the Board, and other municipal officials or boards subject to the Board's or its agent's final review and assent.

2. No construction activity shall occur on the Project, and no building permit shall be issued, until the Applicant shall have:

- a) Executed and recorded the standard form Regulatory Agreement, and provided evidence of same to the Board and the Building Inspector. The Regulatory Agreement shall be subject to review and approval, as to form and consistency, with this Decision by Town Counsel prior to execution, such approval not to be unreasonably withheld.
- b) Submitted to the Board and the Building Inspector a Construction Management Plan (CMP), as well as a Construction Management Schedule (CMS), that generally conforms to industry standard practice and addresses all construction-related conditions specifically set forth in this Decision. Additional copies of the proposed CMP shall be provided to the Planning Board, Board of Health, Fire Chief and Police Chief.
- c) Provide to the Department of Public Works and Building Commissioner a final Stormwater Pollution and Prevention Plan to address specific sedimentation, erosion and dust control, which illustrates, at a minimum, locations of measures such as hay socks, silt fence, sedimentation basins, and all other erosion controls on the plans, and provides detailed construction sequencing and methods to protect the infiltration capacity of each infiltration system.
- d) Provide procedures to the Health Department, Conservation Commission and Building Commissioner that outline the specific operation and maintenance measures for all stormwater/drainage facilities.

3. Prior to Site Activities, the Applicant shall provide, and update as necessary, to the Board and Building Department:

- a) the company affiliation, name, address and business telephone number including 24-hour contact information of the construction manager who shall have overall responsibility for construction activities on site;
- b) a copy of a municipal lien certificate indicating that all taxes, assessments and charges due on the Premises have been paid;
- c) certification from the Applicant that all required federal, state and local licenses and permits have been obtained;
- d) proof that "Dig-Safe" has been notified at least 72 hours prior to the start of any site work
- e) proof that street signage is in place to ensure that emergency personnel can locate the site to provide emergency services to protect and secure the site and construction personnel (if determined necessary by the Fire Department and/or Police Department); and
- f) at least 48 hour written notice. If activity on site ceases for longer than thirty days, 48 hour written notice is required prior to restarting work.

4. During construction, the Applicant shall conform to all local, state and federal laws regarding noise, odor, vibration, dust, and blocking of Town Roads. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Exterior construction, other than emergency work or finishing cement, shall not commence on any weekday (Monday through Friday) before 7:00 a.m. and shall not continue beyond 5:00 p.m. Construction on Saturdays shall not commence before 9:00 a.m. and shall not continue beyond 4:00 p.m. provided. Except for emergency work, and/or exceptions approved in advance, there shall be no exterior construction on any Sunday or state or federal legal holiday. Hours of

operation shall be enforced by the Police Department. For this condition, construction activities shall include, but not be limited to: start-up of equipment or machinery; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; demolition of existing structures; removal of stumps and debris; and erection of new structures. Deliveries shall not commence before 6:30 a.m.

5. During construction, at the end of each work day, the Applicant shall cause all erosion control measures to be in place and shall cause all materials and equipment to be secured. Upon completion of all work on site and prior to as-built approval, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations and the Board shall be notified in writing of the final disposition of the materials.

6. The Applicant shall design its Final Plans with the following specifications:

- a) The Project shall conform to all pertinent requirements of the Americans with Disabilities Act (ADA) and Massachusetts Architectural Access Board (MAAB), to the extent applicable.
- b) All signage, including signs to promote sale of the dwellings, shall comply with the Zoning Bylaws, except as waived herein, and shall be maintained by the Applicant.

7. No tree stumps or other demolition and construction debris shall be buried on the Property. All tree stumps shall either be ground or removed from the Property. No burning is allowed on the Property.

8. Blasting, if any, shall be performed in accordance with regulations of the Commonwealth of Massachusetts, 527 CMR. 13.00, and in accordance with any existing written regulations of the Shirley Fire Department related to blasting. The Applicant shall not use explosives containing perchlorate. Any blasting activity at the site must conform to the requirements of the Town's Fire Department, the State Fire Marshall's Office and any other appropriate regulatory official. Additionally, the Contractor shall be responsible for seismograph monitoring, notification to neighbors within the immediate work area prior to blasting and posting a fire detail on the site. If blasting is required for site construction, the following steps will be taken to monitor/rectify any potential damage as a result of the blasting:

- a) The Applicant shall provide documented inspections, i.e. videotaping, of any foundations and pools within 500' of any expected blast area prior to the start of any blasting;
- b) The Applicant shall provide pre and post blasting water testing for all residents within 500' of any expected blast area prior to the start of any blasting. Water quality, including radon testing, and a specific capacity/short term pumping test shall be included in this testing;
- c) The Applicant or its hired contractors, shall notify those residents within 500' of any expected blast area, when blasting will begin on the site and will again notify them when all blasting is completed;
- d) Blasting hours will be limited from 8:00a.m. to 4:00p.m., weekdays only;
- e) The Applicant shall rectify those problems that are proven to be a result of blasting, i.e. foundation cracking and deterioration in water quality of abutting properties;

f) Hours of operations pertaining to air hammering or similar practices shall be limited to weekdays between the hours of 8:00 a.m. through 4:00 p.m.

9. All staging areas, including without limitation parking areas for construction personnel, portable toilets, temporary work facilities, etc. shall be on the Property. No parking shall be permitted on Town ways by Project personnel or others in connection with the construction of the Project. **Thirty days following the final certificate of occupancy**, construction staging areas shall be cleared and completed in accordance with Final Plans.

10. If construction activity ceases for longer than 30 days, then written notice shall be provided by the Applicant to the Building Commissioner at least 48 hours before resuming work. Pursuant to 780 CMR 33 Safeguards during Construction and applicable states, the Building Commissioner may require that any foundation, trench, structure, equipment or other hazard be secured as necessary, in his opinion, including but not limited to installation of fencing and/or filling of trenches.

11. If construction is temporarily suspended during the growing season, all exposed areas shall be stabilized by seeding and/or mulching within 14 days of suspension of construction. If construction is temporarily suspended outside the growing season, all exposed areas shall be stabilized by mulching and tack within 14 days of suspension of construction. Slopes steeper than 3:1 shall be stabilized by netting and pinning during suspension of construction.

12. Landscaping and lighting shall be as shown on the Final Plans except for the required street lights described below in Section . To the extent that landscaping for the Project is not completed prior to the issuance of the certificate of occupancy, the Applicant shall provide the Town with a satisfactory surety instrument, that shall not expire unless and until it is satisfactorily replaced or released, and in an amount to be determined by the Board in consultation with Town boards and officials and other consultants based upon the Applicant's reasonable estimate of the costs to complete such landscaping work.

13. Project surety shall be held by the Town Treasurer until the Treasurer is notified by the Board to release the surety. A Tripartite agreement with the project lender, developer and the Zoning Board of Appeals shall be deemed sufficient surety for this section. Requests to reduce the surety may be submitted as the landscaping work progresses and shall include the amount of requested reduction, a list of work outstanding and a cost estimate of the same. The amount of the surety retained shall be based on the cost estimate of the remaining work, and the surety shall be fully released upon the completion of the landscaping work.

14. Prior to the commencement of any ground disturbance, clearing of vegetation, or construction the Applicant's engineer shall provide to the Town's Engineer a detailed construction sequencing plan, which may be incorporated in the Applicant's Stormwater Pollution Prevention Plans ("SWPPP") as referenced in the Stormwater Report, last revised June, 2021, detailed plans of the wetlands delineation and related infrastructure as approved under the Wetlands Protection Act, and a construction traffic management plan during each phase of the work, which includes requirements relative to any and all appropriate signage and police details during the construction phase.

15. The Final Plans shall show the layout of the erosion control devices. An erosion control, construction management and construction sequencing plan(s) showing the construction methods, scheduling, phasing, winter stabilization measures, and location of necessary water pollution and erosion control methods shall be submitted as part of the Final Plans. The Final Plans shall show the location of the storage areas and designation of temporary stump storage or spoils material area, in accordance with state regulations.

16. The Applicant shall pay all reasonable fees imposed for the purpose of inspecting and monitoring the compliance of the Project's construction with the terms of this permit, local bylaw requirements not waived by this permit, and other permits and approvals issued with respect to this Project for which the Town has monitoring responsibility. Any outstanding fees owed for consulting services incurred by the Board before this decision was rendered shall be paid forthwith and before any building permit issues. Thereafter, no occupancy permit shall issue if an outstanding fee bill is 30 days overdue.

17. All fill used in connection with this project shall be clean fill, source of the fill shall be approved by the Building Inspector prior to installation. Fill shall contain no trash, refuse, rubbish or debris, including, but not limited to: lumber, brick, asphalt, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, appliances, motor vehicles or any part of the foregoing. Any fill subject to specialized disposal in conformance with current environmental criteria shall not be used.

18. In order to provide protection to abutters' trees, the Applicant shall establish and mark on the ground a Limit of Work line at the anticipated limit of grading or excavation. Construction Fencing, consisting of orange construction fence and silt fence depending on grading, shall be installed just inside the Limit of Work. Aside from tree protection measures, no work of any kind shall be permitted outside of the Limit of Work line, either above or below ground.

19. Excavation for any retaining wall footings within the drip line of an abutter's tree or a tree on site specified to be saved shall be done using an air spade, either directly by or under the guidance of a Certified Arborist. While constructing any retaining wall, foundation, and backfilling, exposed roots shall be protected as directed by the Certified Arborist.

20. Any required root pruning of abutters' trees, if necessary, shall be performed either directly by or under the guidance of a Certified Arborist. Any such root cutting shall occur only on the Applicant's property (unless there is permission or legal right to enter onto abutting property) and shall occur only in accordance with all of the requirements of Massachusetts state law.

21. Prior to construction, physical barriers shall be installed, as needed, to provide tree protection. Erosion controls and tree protection measures shall be continuously maintained throughout the course of construction.

22. Adjacent public streets shall be swept as needed to remove sediment and debris. Adequate provisions shall be made by the Applicant to control and minimize dust on the Property during construction in accordance with the construction management plan. The Applicant shall keep all portions of any public way used as access/egress to the Project free of soil, mud or debris deposited

due to use by construction vehicles associated with the Project and shall employ water-based street sweeping so as to avoid clouds of dust in and around the public and private ways and surrounding neighborhood.

23. Board members, its staff, consultants or other duly authorized agents of the Town of Shirley shall have the right to enter upon the property to inspect the site at any time, for compliance with the Final Plans and the terms, provisions and conditions of this comprehensive permit.

24. Prior to the issuance of any building permit the Applicant shall submit plans and supporting materials and calculations for review and approval by the Shirley Fire Department under state law. Submission materials shall demonstrate compliance with all applicable access requirements.

25. During construction, the Applicant shall submit monthly status reports to the Board.

D. INFRASTRUCTURE - GENERAL

1. The Applicant shall have the entrance locations and elevations checked in the field by a Registered Land Surveyor prior to installation of binder course pavement. Results of the survey shall be made available to the Building Inspector for review and comment.

2. The Applicant shall fund or install (to be decided by the Shirley Department of Public Works ("DPW")) 6 new street lights on pole 1, 3, 6, 8, 9, and 11 as designated by the DPW.

3. The Applicant shall maintain site line clear areas along Benjamin Road and Ambrose Way. Landscaping will be kept trimmed to prevent blocking sight.

4. The following portions of the Project shall be and shall remain forever private and the Town of Shirley shall not have, now or ever, any legal responsibility for their operation, maintenance, repair, or replacement:

- a) The entire on-site stormwater management system and all stormwater and water connections, lines and equipment required from the public way to the Property;
- b) The entire on-site sewage and all connections, lines, and other features.
- c) The sidewalks, driveways, roads, utilities, drainage systems, water system, fire protection, gas if applicable, electric, telephone, and cable system and all other infrastructure shown on the Final Plans as serving the Project, including but not limited to plowing, sanding, snow removal, trash collection, and landscape maintenance;
- d) Property lighting, landscaping and screening.

E. WATER DEPARTMENT

1. The Project shall be served by municipal water, at the Applicant's sole expense, in accordance with the Shirley Department of Public Works requirements.

2. The Applicant shall loop the proposed water main through to Center Road to provide adequate flow and volume for fire protection and provide a second feed to the project in the event of a water main break on Benjamin Road.
3. All utilities and water construction and materials shall be constructed consistent with the Final Plans and otherwise in accordance with Town of Shirley requirements except as otherwise shown on the Final Plans.
4. All utilities within the Premises shall be installed underground.
5. The Applicant shall equip each dwelling unit with low-flow toilets and high-efficiency water sense faucets and 1.5 gallon shower heads to reduce water usage.

F. SEWER

1. All sewer infrastructure shall comply with Shirley Sewer Rules and Regulations Article A-IV. Gravity sanitary sewers shall be polyvinyl chloride (PVC), SDR 35. All force main pipe shall be C900 PVC pipe, DR-18 with a minimum diameter of 4-inch. Final Plans shall address all comments contained in a Memorandum by Weston & Sampson dated May 13, 2021.
2. Final Plans shall correct the invert information for the existing sewer manhole in Benjamin Road as noted in the Weston and Sampson comments dated June 30, 2021.
3. Final Plans shall include a detailed design of the sewer pump station. The pumps station design shall be designed in accordance with the Shirley Sewer Use Rules and Regulations. Final Plans shall be submitted to the Shirley Sewer Department for review by Weston & Sampson with review cost paid by the Developer.
4. The proposed sewage pump station shall be constructed, installed and operated in accordance with all applicable Local, State and Federal laws, rules and regulations, unless specifically waived herein.
5. The Applicant shall post a surety bond in a form mutually agreeable to the Applicant and the Town, in favor of the Town, prior to the issuance of an Occupancy Certificate, in an amount equal to the annual maintenance cost of the Sewage Pump Station.
6. The Applicant shall provide a detailed design plan, supporting calculations and an Operation and Maintenance Plan for the sewage pump station disposal system for review and approval by the Town Sewer Department Engineer and the Sewer Department's Town's peer review consultant prior to issuance of a Building Permit.
7. The Project shall include a generator as shown on the Final Plans for emergency power backup in the event of utility disruption to ensure proper function of the sewage pump station.
8. The Applicant shall install appropriate baffling and insulation to avoid unnecessary noise associated with the generator.

G. TRANSPORTATION

1. The Applicant shall provide roadway striping from Ayer Road to the speed limit change (which is approximately 50 feet before the power lines) consisting of four lines of painted pavement marking; two centerline and a fog line on each side, creating two 9-foot vehicle lanes and 3-foot shoulders. The striping is intended to reduce vehicle speeds.
2. The Applicant shall provide two mobile feedback speed signs.
3. The Applicant shall provide all necessary easements and restrictions along Benjamin Road on either side of the proposed access drive to ensure sight distances are permanently maintained. The sight distance triangles shall be 15 feet deep at the edge of the proposed access drive from the edge of the travel way of Benjamin Road and 305 feet long. The easement on the single family home adjacent to the Development will be permanently maintained by the Village at Shirley Homeowner's Association with landscaping between 3 feet above the ground and 7 feet above the ground.

H. STORMWATER MANAGEMENT

1. The use of de-icing agents should be tightly restricted to that absolutely necessary for safety in consideration of water quality concerns. Sodium Chloride is not to be used for de-icing and only Calcium Chloride or other more environmentally protective alternative shall be used for de-icing operations. Snow and ice from snow removal operations shall be carefully controlled onsite to assure that any snow removed from the parking and roadway areas shall be deposited in the areas shown as "Snow Storage Areas" on the Final Plans. These restrictions and limitations shall be included in any maintenance contracts.
2. The Applicant will provide an Operations and Maintenance Plan and Long-term Pollution Prevention Plan prior to the issuance of the building permit.
3. Snow shall never be placed within or above the stormwater management systems.
4. Stormwater Management Conditions.
 - a) **Prior to starting any site work**, The SWPPP shall be provided to the contractors during construction and a copy must be kept on site during construction.
 - b) The Applicant shall comply with the SWPPP during construction.
 - c) The Applicant shall protect the subsurface infiltration system during construction in order to prevent a reduction in the long-term infiltration capacity of the soil. Once construction is complete the system shall be cleaned of any silt and sediment. . The use of silt sacks within the proposed catch basins shall be used during construction.
 - d) The post development impervious areas shall be consistent with the impervious areas shown on the design plans which were used to analyze and size the stormwater management system.
 - e) The as-built conditions shall closely match the drainage areas shown on the post-development drainage map included in the stormwater report.

- f) Any imported fill shall have the same drainage characteristics as the existing site soils for which the stormwater analysis and design are based.
5. Stormwater Management Maintenance. The SWPPP and the stormwater Operations and Maintenance Plan (O&M Plan) shall be consistent with the Stormwater Plan referenced herein, and last revised June, 2021. In the event a management company is engaged; such guidelines shall be incorporated by reference in the management contract.
6. The final Stormwater O&M Plan shall be recorded at the registry of deeds **prior to substantial completion of construction**. Evidence of recording shall be presented to the Board and the Building Department **prior to issuance of the final certificate of occupancy**.
7. In the event that the Applicant or its successor fails to maintain the stormwater management system in accordance with such guidelines for operation and maintenance, after notice to the Applicant or successor and the failure to reasonably cure, the Town may perform necessary maintenance or repairs and the Applicant or successor hereby authorizes the Town to enter the Property for this purpose. In such event, the Applicant or successor shall reimburse the Town for any and all expense associated therewith; in the event of nonpayment, the Town may place a lien on the Property and any improvement thereupon. All costs incurred by the Town in connection with its performance of such required maintenance on the Property shall be reimbursed by the Applicant or its successor to the Town within thirty (30) days of receipt of the Town's invoice for such costs, which shall constitute a municipal charge or fee, pursuant to M.G.L. c. 40, §§57 and 58.
8. The Stormwater O&M Plan and Long-Term Pollution Prevention Plan shall be combined into a letter sized, bound document and provided to the property Owner and Operator **prior to the final certificate of occupancy**. The condition shall also require compliance with this document in perpetuity. This document shall include a simplified site plan that would highlight the location of the various Best Management Practices (BMPs). This document shall be separate from the required SWPPP and facilities related O&M plan.

H. GENERAL CONDITIONS

1. The Applicant or Property Management Company shall be responsible for all snow plowing and proper maintenance of all access ways and sidewalks so that same are kept accessible year-round for pedestrian and emergency access and egress satisfactory to the Town's public safety departments.
2. The lawn area maintenance shall be instituted for reduction/elimination of pesticides and fertilizers as recommended by the "Healthy Lawns for Healthy Families" program.
3. Except where specifically waived by this Comprehensive Permit, construction shall be in accordance with all applicable zoning and other bylaws, rules and regulations of the Town. In the event that the Applicant or the Board's site/civil engineering consultant, in the final design of the Project, determines that additional waivers not granted herein are required, the Applicant shall be required to obtain such additional waivers after written request to the Board. The Board may grant or withhold such additional waivers in accordance with applicable rules and regulations.

4. Prior to the issuance of any building permit the Applicant shall submit plans and supporting materials and calculations for review and approval by the Shirley Fire Department under state law. Submission materials shall demonstrate compliance with all applicable access requirements.
5. The Applicant and/or the Property Management Company shall be permanently responsible for the following at the Project:
 - a) all plowing, sanding, and snow removal. Snow shall be piled in designated locations as shown on the Final Plans or alternate locations acceptable to the Fire Chief. In the event that snow impairs ways such that the travel area is less than eighteen feet wide, and all designated snow removal locations have been exhausted, at the direction of the Fire Chief, the Applicant shall cause snow to be transported from the Project to an off-site location for the legal disposal thereof;
 - b) all site maintenance and establishing a regular schedule for site maintenance;
 - c) repairing and maintaining all on-site ways, including drainage structures and utilities therein;
 - d) conducting annual inspection, maintenance and cleaning of all elements of the drainage system, including but not limited to catch basins, drain manholes, detention basins, swales and pipelines; and
 - e) site lighting and landscaping.
6. Applicant shall provide landscaping in accordance with the Final Plans.
7. All utilities and water construction and materials shall be constructed consistent with the Final Plans and otherwise in accordance with Town of Shirley requirements except as otherwise shown on the Final Plans.
8. All utilities within the Premises shall be installed underground.
9. No stumps or construction debris shall be buried or disposed of at the Property.
10. The Applicant shall equip each dwelling unit with low-flow toilets and high-efficiency water sense faucets and 1.5 gallon shower heads to reduce water usage.
11. The Project shall be served by municipal water, at the Applicant's sole expense, in accordance with the Shirley Department of Public Works requirements and Wright-Pierce engineering report dated April 7, 2021.
12. All proposed signage shall be compliant with MUTCD standards and the appropriate signage shall be subject to the review and determination of consistency with this Decision by the Board and the Town's Safety Officer.
13. The Applicant shall work with the Shirley School Department to identify a safe location for the school bus stop and ensure that the planned stop location has adequate sight lines. Details

of the specific location and any accommodations shall be included in the Final Plans and reviewed by the School Department and applicable public safety personnel.

14. Any retaining wall and fencing details shall be submitted to the Building Commissioner for review and determination of consistency with the Final Plans and applicable State Building Code requirements.

15. If any part of this Decision is for any reason held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity of any other portion of this Decision.

16. The Applicant shall provide parking spaces as shown on the Final Plans.

17. The Applicant shall work with the abutters across Benjamin Road 44 Benjamin Road, 37 Benjamin Road and 43 Benjamin Road, to provide adequate screening for their properties. Any discrepancies regarding "adequate screening" shall ultimately be determined by the Board.

I. WAIVERS

TOWN OF SHIRLEY PROTECTIVE ZONING BYLAWS

1. **Section 2.1.3 Uses, General.** provides that a building, use or structure not specifically permitted shall be deemed prohibited, except for uses that may not be regulated by zoning under M.G.L. c.40A, section 3. *An exception is being requested, as the Multifamily dwelling as proposed in the Comprehensive Permit is a permit/use that is not specifically stated as being allowed in the By-laws.*
2. **Section 2.9 Rate of Development.** allows for a maximum of five units be permitted for construction per year for any single person or entity. *The Applicant is requesting an exception from this section.*
3. **Section 2.10.10. Principal Buildings.** Allows for not more than one principal building on any lot. *The Applicant is requesting an exception from this section as the current Development proposal calls for multiple structures on one lot in an R-2 Zoning District.*
4. **Section 3.3.2.b. and Sec. 3.3.2.d. Dimensional Regulations.** Requires lots in the R-2 district have a minimum frontage of 150 feet and a minimum lot width of 150 feet. *An exception is requested from this section as the proposed development has 141.23 feet of frontage on Benjamin Road and has a minimum lot width of 128.5 feet.*
5. **Section 3.3.2.e Building & Use Intensity.** Allows for structures with a maximum of 2 ½ stories. *The Commonwealth of Massachusetts requires that 10% percent of housing provided under M.G.L. Chapter 40B provide three bedrooms. To accommodate this requirement some of the units will have a bedroom on the third floor with a dormer on*

the back of the building. These units would be considered three story buildings under section 2.10.1.b of the Shirley Protective Zoning Bylaws, as such an exception is required from this section.

6. **Section 4.1.1. Site Plan Review** requires that Multi-family housing is subject to Site Plan Review under Section 7 of this Bylaw. *An exception is requested from Section and Section 7 as the Development shall follow requirements of M.G.L Chapter 40B and its regulations, guidelines, and practices. This process would be redundant with the Comprehensive Permit process as established by State regulations and by the Shirley Zoning Board of Appeals.*
7. **Section 4.1.2.b Maximum Density** this sections requires allowable density for multifamily dwellings in specific districts, but is silent on the R-2 district as this is not an allowed use in the R-2 district. *An exception is requested to construct forty-eight dwellings on 9.11 acres.*
8. **Section 4.1.2.c** allows more than one principal building may be permitted on a single lot by Special Permit from the Planning Board provided that no principal building may contain less than three (3) units or more than six (6) units unless waived by the Planning Board. *This application is proposing duplex style buildings; therefore the Applicant is seeking an exception form this section to allow for multiple principal duplex style units. Furthermore, an exception is requested from this section to not require a Special permit from the Planning Board as the Development shall follow requirements of M.G.L Chapter 40B and its regulations, guidelines, and practices. This process would be redundant with the Comprehensive Permit process as established by State regulations and by the Shirley Zoning Board of Appeals.*
9. **Section 5.3.7.b. Design Standards for Off-Street Parking.** Requires that any off-street parking area located in front of a building shall be separated from it by a paved walk at least eight (8) feet wide with a seven (7) inch high safety curb. *An exception is requested from this section to allow for five (5) foot wide sidewalks with a five (5) foot wide landscape area and five (5) inch cape cod bituminous curb.*
10. **Section 5.3.9.b.2 Landscaping and Screening Requirements. Interior Landscaping.** Requires that off street parking areas provide interior landscaping that shall include at least one (1) deciduous tree for each eight (8) parking spaces, each tree to be not less than two (2) inches in diameter and at least six (6) feet in overall height immediately after planting. *The applicant is proposing a comprehensive landscape design as illustrated on the Landscape Plan included with the application package, as such an exception is requested from this section to allow for Landscaping around the residential parking areas as shown on the plans.*
11. **Section 6.3. Signs Permitted in Residence Zones**
The following signs are permitted in all residence zones.

6.3.1. One non-illuminated or indirectly illuminated identification sign for each separate street line of an approved Special Permit Use not to exceed nine (9) sq. ft. in area nor eight (8) ft. in height; and further limited as follows: said sign shall be subject to the applicable side and rear yard requirements for principal buildings and a minimum of fifty percent (50%) of the applicable front yard requirement for principal buildings; the height of such sign shall not be greater than the distance it is located from any lot line; the sq. ft. area of such shall not be greater than one-half (1/2) of the linear foot distance it is located from any lot line. *An exception is requested from this section to allow for a sign containing 12 square feet of area, where nine (9) feet is allowed, with a setback of 13.5 feet where 24 feet is required.*

12. Section 7 Site Plan Review. *An exception is requested from this Section and all subsections, as the Development shall follow requirements of M.G.L Chapter 40B and its regulations, guidelines, and practices. This process would be redundant with the Comprehensive Permit process as established by State regulations and by the Shirley Zoning Board of Appeals.*

13. Section 7.5.3.i *requires The location of any trees of more than eight inches in diameter and specimen trees of more than four inches in diameter, both measured as diameter at breast height (dbh)... An exception is requested from this section to allow for review without a full survey of all trees.*

IV. RECORD OF VOTE

On November 8, 2021, the Board, on a motion made by Kevin Kelly, seconded by Brian Hildebrant, voted 3-2 (Guercio, Kelly, and Hildebrant in favor and Mirkovic and Yocum opposed) to approve the **Comprehensive Permit** to allow for development as conditioned herein at 42 Benjamin Road, Parcel ID: 33 B 4 and a parcel on Center Road, Parcel ID: 33 b 5, Shirley, MA.

The Board has complied with all statutory requirements for the issuance of this Comprehensive Permit. A copy of this decision will be filed with the Town Clerk. Copies of this decision have been, or will be mailed, to all parties, persons or boards as required by M.G.L. c. 40B.

The grant of this comprehensive permit hereunder is dependent upon compliance with all of the conditions set forth above and upon the following additional terms and conditions.

This Comprehensive Permit Decision shall be a master permit which shall subsume all local permits and approvals normally issued by local boards, as that term is defined in 760 CMR 56.00 et seq. Upon presentation of this Comprehensive Permit and subsequent more detailed Final Plans as required pursuant to this Decision and in order to obtain other relevant approvals, together with final approval from MassHousing pursuant to 760 CMR 56.04(7), all Local Boards shall take all actions necessary, including but not limited to issuing all necessary permits, approvals, waivers, consents, and affirmative action such as plan endorsements and requests for waivers, after

reviewing such plans only to ensure that they are consistent with this Comprehensive Permit (including any waivers or lack of waivers set forth herein), the final approval of the Subsidizing Agency, and in compliance with applicable state and federal laws, regulations, and codes.

On November 8, 2021 the Board voted to authorize the Chairman, Leonardo Guercio, to sign this decision on behalf of the Board.

Any person aggrieved by this decision may appeal to a court of competent jurisdiction within 20 days as provided by M.G.L. c. 40A, § 17 or M.G.L. c. 40B, §20 et seq., as applicable.

Zoning Board of Appeals of the Town of Shirley

A handwritten signature in black ink, appearing to read 'Leonardo Guercio', written over a horizontal line.

Leonardo Guercio

11/22/21

Date

Chairman, Town of Shirley Zoning Board of Appeals

H. LAPSE

Any comprehensive permit granted hereunder shall lapse three years from the date that it takes final effect (i.e., the date that it is filed with the Town Clerk, subject to tolling in the event of any appeal and as provided in 760 CMR 56.05(12)(c)), unless the comprehensive permit is duly recorded before the three year period elapses and unless construction on the Project has commenced within such period. In addition, construction in accordance with this comprehensive permit shall be completed within three years of the commencement of construction. The Applicant may apply to the Board for reasonable extensions of these deadlines for good cause, but shall do so before any lapse occurs.

This comprehensive permit shall not be valid until it is duly recorded with the Registry of Deeds and evidence of such recording is provided to the Building Inspector and the Board. Any modification of this comprehensive permit shall be subject to 760 CMR 56 or any successor regulation thereto.

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

I hereby certify that this is a true copy of the decision rendered by the Board of Appeals and filed in the office of the Town Clerk on _____, _____; I further certify that twenty days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Shirley, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

Town Clerk

EXHIBITS

1. List of Waivers

EXHIBIT A

WAIVERS

On November 8, 2021, the Board voted unanimously to approve the following waivers:

TOWN OF SHIRLEY PROTECTIVE ZONING BYLAWS

1. **Section 2.1.3 Uses, General.** provides that a building, use or structure not specifically permitted shall be deemed prohibited, except for uses that may not be regulated by zoning under M.G.L. c.40A, section 3. *An exception is being requested, as the Multifamily dwelling as proposed in the Comprehensive Permit is a permit/use that is not specifically stated as being allowed in the By-laws.*
2. **Section 2.9 Rate of Development.** allows for a maximum of five units be permitted for construction per year for any single person or entity. *The Applicant is requesting an exception from this section.*
3. **Section 2.10.10. Principal Buildings.** Allows for not more than one principal building on any lot. *The Applicant is requesting an exception from this section as the current Development proposal calls for multiple structures on one lot in an R-2 Zoning District.*
4. **Section 3.3.2.b. and Sec. 3.3.2.d. Dimensional Regulations.** Requires lots in the R-2 district have a minimum frontage of 150 feet and a minimum lot width of 150 feet. *An exception is requested from this section as the proposed development has 141.23 feet of frontage on Benjamin Road and has a minimum lot width of 128.5 feet.*
5. **Section 3.3.2.e Building & Use Intensity.** Allows for structures with a maximum of 2 ½ stories. *The Commonwealth of Massachusetts requires that 10% percent of housing provided under M.G.L. Chapter 40B provide three bedrooms. To accommodate this requirement some of the units will have a bedroom on the third floor with a dormer on the back of the building. These units would be considered three story buildings under section 2.10.1.b of the Shirley Protective Zoning Bylaws, as such an exception is required from this section.*
6. **Section 4.1.1. Site Plan Review** requires that Multi-family housing is subject to Site Plan Review under Section 7 of this Bylaw. *An exception is requested from Section and Section 7 as the Development shall follow requirements of M.G.L Chapter 40B and its regulations, guidelines, and practices. This process would be redundant with the Comprehensive Permit process as established by State regulations and by the Shirley Zoning Board of Appeals.*
7. **Section 4.1.2.b Maximum Density** this sections requires allowable density for multifamily dwellings in specific districts, but is silent on the R-2 district as this is not an

allowed use in the R-2 district. *An exception is requested to construct forty-eight dwellings on 9.11 acres.*

8. **Section 4.1.2.c** allows more than one principal building may be permitted on a single lot by Special Permit from the Planning Board provided that no principal building may contain less than three (3) units or more than six (6) units unless waived by the Planning Board. *This application is proposing duplex style buildings; therefore the Applicant is seeking an exception from this section to allow for multiple principal duplex style units. Furthermore, an exception is requested from this section to not require a Special permit from the Planning Board as the Development shall follow requirements of M.G.L Chapter 40B and its regulations, guidelines, and practices. This process would be redundant with the Comprehensive Permit process as established by State regulations and by the Shirley Zoning Board of Appeals.*
9. **Section 5.3.7.b. Design Standards for Off-Street Parking.** Requires that any off-street parking area located in front of a building shall be separated from it by a paved walk at least eight (8) feet wide with a seven (7) inch high safety curb. *An exception is requested from this section to allow for five (5) foot wide sidewalks with a five (5) foot wide landscape area and five (5) inch cape cod bituminous curb.*
10. **Section 5.3.9.b.2 Landscaping and Screening Requirements. Interior Landscaping.** Requires that off street parking areas provide interior landscaping that shall include at least one (1) deciduous tree for each eight (8) parking spaces, each tree to be not less than two (2) inches in diameter and at least six (6) feet in overall height immediately after planting. *The applicant is proposing a comprehensive landscape design as illustrated on the Landscape Plan included with the application package, as such an exception is requested from this section to allow for Landscaping around the residential parking areas as shown on the plans.*
11. **Section 6.3. Signs Permitted in Residence Zones**
The following signs are permitted in all residence zones.
 - 6.3.1. One non-illuminated or indirectly illuminated identification sign for each separate street line of an approved Special Permit Use not to exceed nine (9) sq. ft. in area nor eight (8) ft. in height; and further limited as follows: said sign shall be subject to the applicable side and rear yard requirements for principal buildings and a minimum of fifty percent (50%) of the applicable front yard requirement for principal buildings; the height of such sign shall not be greater than the distance it is located from any lot line; the sq. ft. area of such shall not be greater than one-half (1/2) of the linear foot distance it is located from any lot line. *An exception is requested from this section to allow for a sign containing 12 square feet of area, where nine (9) feet is allowed, with a setback of 13.5 feet where 24 feet is required.*

12. **Section 7 Site Plan Review.** *An exception is requested from this Section and all subsections, as the Development shall follow requirements of M.G.L Chapter 40B and its regulations, guidelines, and practices. This process would be redundant with the Comprehensive Permit process as established by State regulations and by the Shirley Zoning Board of Appeals.*
13. **Section 7.5.3.i**requires *The location of any trees of more than eight inches in diameter and specimen trees of more than four inches in diameter, both measured as diameter at breast height (dbh)... An exception is requested from this section to allow for review without a full survey of all trees.*